(3)

No. 90-1798

AUG 9 1991

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1990

RAYMOND A. EBANKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY BRIEF OF PETITIONER

THOMAS A. SHEEHAN
Counsel of Record
CLAUDIA J. YORK
SHUGHART THOMSON & KILROY
A Professional Corporation
Twelve Wyandotte Plaza
120 W. 12th St., Ste. 1700
Kansas City, Missouri 64105
(816) 421-3355

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

No. 90-1798

In The

Supreme Court of the United States

October Term, 1990

RAYMOND A. EBANKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY BRIEF OF PETITIONER

The petition for writ of certiorari filed by Raymond Ebanks should be granted. The brief in opposition amplifies, rather than diminishes, the problems with Ebanks' twenty-two year sentence.

The real issue in this case is whether district courts are free to sentence criminal defendants with full knowledge that eager government appellate lawyers will later comb the record in search of evidence to support the sentence. That is what happened here.

There can be no doubt that unless the cash seized in this case was derived from the conspiracy, it should not have been used to enhance Ebanks' Base Offense Level. Nevertheless, the government argues that "[n]othing in

the Sentencing Guidelines or the commentary requires the court to make an explicit finding . . . that cash seized from the defendant is derived from drug transactions." Brief in Opposition at 4.

The government also proclaims that the quantity of drugs seized in this case did not adequately reflect the scale of the offense. If the district court had made this finding, this petition would not have been filed. But, the district court did not so find. Rather, as the government concedes, the district court implicitly made all the findings required to support the sentence imposed. As the government states, "the district court in effect" and "necessarily" found that the amount of drugs seized did not reflect the scale of the offense. The government reasons that the district court must have made the proper findings because otherwise it could not have sentenced Ebanks to twenty-two years imprisonment. This sort of reverse reasoning flies in the face of 18 U.S.C. § 3553(c), which requires the sentencing court to state the "reasons for its imposition of a particular sentence."

CONCLUSION

For these reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

THOMAS A. SHEEHAN
Counsel of Record
CLAUDIA J. YORK
SHUGHART THOMSON & KILROY
A Professional Corporation
Twelve Wyandotte Plaza
120 W. 12th St., Ste. 1700
Kansas City, Missouri 64105
(816) 421-3355